

MEMORANDUM OF LAW

DATE: October 19, 1987

TO: Susan C. Hamilton, Deputy Water Utilities
Director, Special Projects
FROM: City Attorney
SUBJECT: Procedures for the Metropolitan Sewer Task
Force (MSTF)

You forwarded a series of fourteen (14) questions regarding the materials associated with the Metropolitan Sewer Task Force (hereinafter MSTF). The following provides a succinct seriatim response to each with an invitation to explore any clarification in depth should the factual circumstance arise.

1. Must MSTF meetings be publicly noticed? Yes. California Government Code section 54952.3 (a provision of the Ralph M. Brown Act) includes advisory bodies created by resolution within the parameters of the requirements of the act. MSTF was formed on April 27, 1987 by Resolution No. 268232 as a San Diego City Charter 43(b) advisory body and hence is clearly subject to the Brown Act. Section 54954.2 of the Brown Act requires that at least seventy-two (72) hours before a regular meeting, an agenda of the meeting must be posted in a location "freely accessible" to the public. The agenda must include the time and location of the meeting and a "brief general description" of the items to be discussed. In addition mailed notice may be required twenty-four (24) hours in advance to each person so requesting the notice in writing. Section 54952.3.
2. Must MSTF Committee meetings be noticed? Yes. Where the Brown Act exempts committees consisting of less than a quorum from its restrictions, Council Policy 000-16 (attached) provides that appointed boards and "committees thereof" be in full view of the public. While patterned on Brown Act requirements, Council Policy 000-16 does not contain the less than a quorum exception. Hence committee meetings should be noticed.
3. Must MSTF informational tours be noticed? Yes, with qualifications. Generally informational sessions are "meetings" within the scope of the Brown Act since acquiring information generally involves some deliberation and/or questions that may have a bearing on

the public decision to be made. Hence pre-council information sessions have been ruled within the act. 42 Ops. Cal. Atty. Gen. 61 (1963). However, attendance at purely social gatherings or national conventions where no public business is discussed have been held to be outside the act. 63 Ops. Cal. Atty. Gen. 820 (1980). Hence rather than monitor the conversation of the Task Force, we advise that tours be noticed with a brief agenda regarding the facility or information to be examined.

4. How far in advance must the notice be posted? See response to No. 1 supra.
5. Must minutes be produced? The Brown Act mentions "minutes" only in conjunction with "emergency special meetings" (Section 54956.5) leaving the rules for the conduct of regular meetings to the resolution or by-laws of the body itself. Section 54954. However, to insure the proper consideration of the agenda and Task Force business, minutes should be kept. Since minutes are clearly a writing relating to the conduct of public business, as such they become public records within the meaning of the California Public Records Act. California Government Code section 6250 et seq. Copies of public records, such as minutes, are available within ten (10) days upon demand and payment of fees covering cost of duplication. California Government Code sections 6256 and 6257.
6. If the tours are noticed, what accommodations need be made for the public? While we have recommended that tours be noticed since they are arguably meetings in the formative stages of public decision making, the Brown Act does not require public expenditures for audience attendance, travel or meals. The public accessibility is all that is required. Of course invitees of the Task Force may be accorded equivalent amenities.
7. Can non-Task Force members serve on committees? The composition of a Charter Section 43(b) advisory board is fixed by the City Council. The Task Force, then, is fixed by the composition designated in Resolution

No. 268232 and no new members may be added except through City Council action. However, information may be sought through witnesses at the discretion of the Task Force, its Chair or Committee Chairpersons.

8. If nonmembers can serve, what privileges do they obtain?

In light of answer to No. 7, nonmembers do not secure any privileges.

9. In providing information to the public, is a referral to the City Clerk's office sufficient? Yes. The City Clerk may supply appropriate copies and charge the cost of duplication under the California Public Records Act, *supra* and Administrative Regulation 95.20.
10. What exceptions exist to the copying costs of Administrative Regulation 95.20? Department heads or their designee may determine appropriate duplicating costs. Administrative Regulation 95.20, 3.2 and 3.3. While members of the Task Force are entitled to public records to assist in their service to the City, all other requests should be routed through the department head or their designee.
11. May any citizen request placement on mailing list to receive notices? Yes. California Government Code section 54952.3 discussed *supra* provides any person who requests in writing to be mailed such notices is entitled to same at least twenty-four (24) hours before the meeting.
12. May formal groups such as the Sierra Club receive free materials for distribution to their members? No. Administrative Regulation 95.20 at 2.2 permits but does not require free copies to nonprofit corporations and civic organizations. Of course, department heads have the discretion to supply documents that will be returned and permit their duplication for any particular group.
13. May members of the public "check out" MSTF materials for copying? Such materials may be released in the discretion of the department head. However, there is no legal obligation to permit same. Requests for records should be made in writing pursuant to Government Code sections 6256 and 6257 which then insures the maintenance of control over the material.
14. May members of public use a City copier free of charge? No. Both California Government Code section 6257 and Administrative Regulation 95.20 contemplate duplication costs sufficient to cover all material and administrative charges.

This of necessity supplies cursory answers to your series of questions. Of course, we remain available to tailor our response to any specific information that arises.

JOHN W. WITT, City Attorney

By
Ted Bromfield
Chief Deputy City Attorney

TB:js:452.4(x043.2)

Attachment

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